HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G. BHAVANI PRASAD

WRIT APPEAL No. 2328 OF 2005

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Between:

Medapati Bhaskar Rao

……Appellant

And

Goluguri Chandra Reddy and seven others

……Respondents

:: JUDGMENT ::

Counsel for the Appellant : Sri Nooty Rama Mohan Rao

Counsel for Respondent No.1 : Sri O. Manohar Reddy

Counsel for Respondent Nos.2 to 8 : Government Pleader for

Panchayat Raj and Rural

Development

Dated: 24-04-2006

Per G.S. SINGHVI, CJ

This appeal is directed against order dated 11-11-2005 passed by the learned Single Judge in Writ Petition No.24165 of 2005, whereby he declared that there cannot be any objection to the confirmation of auction held for collection of seiniorage fee in respect of package No.3 consisting of Ravulapalem, Ubalanka, Komarjaulamna, Merlapalem in East Godavari District and directed District Panchayat Officer, Kakinada to verify the particulars and pass appropriate order.

For deciding whether the order under challenge suffers from an error apparent and calls for interference by the Division Bench, we have taken the facts from the record of this appeal and Writ Petition No.23782 of 2005, which has also been listed today.

In furtherance of notification dated 28-9-2005, the appellant Medapati Bhaskar Rao and respondent No.1 Goluguri Chandra Reddy gave their bids for package No.3, which included reaches No.6, 7 and 49. Respondent No.1 is said to have given bid of Rs.1,26,27,999/- as against the upset price of Rs.1,15,06,847/-. He is also said to have deposited 25% of the bid amount including E.M.D. After sometime, respondent No.1 filed Writ Petition No.24615 of 2005 with the complaint that even though his bid was highest and he fulfilled the conditions of auction, the official respondents were not confirming his bid. He prayed for issuance of a direction to the official respondents to confirm his bid and allow him to operate the reaches.

The appellant also filed Writ Petition No. 23872 of 2005 for grant of the following reliefs:

> "a) Declare the action of official respondents 1 to 4 in not accepting the offer made by the writ petitioner in his representation dated 27.10.2005 for being conferred the leasehold rights for quarrying sand in package No.3 of Gowthami Right Bank comprising of Ubalanka, Ravulapalem, Kommarrajulanka and Merlapalem reaches between KM 19/0 to 26/0 as arbitrary, illegal and unjust;
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> b) Consequently direct the respondents to accept the bid of the writ petitioner and finalise the leasehold rights in his favour for quarrying sand in Package No.3 of the Gowthami Right Bank comprising of Ubalanka, Ravulapalem, Komarrajulanka and Merlapalem reaches between KM 19/0 to 26/0 forthwith;
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> c) Direct the official respondents to treat and consider the bid of the unofficial respondent No.5 as lapsed and consequently the EMD deposit by him as liable to be forfeited and pass such order or further orders as are deemed fit and proper in the circumstances of the case."

Respondent No.1 herein was impleaded as respondent No.5 in the aforementioned writ petition

When the petition filed by the appellant was listed for admission hearing on 08-11-2005, the learned Assistant Government Pleader for Panchayat Raj made a statement that respondent No.5 has complied with the conditions of tender and deposited 25% of the bid amount within twenty four hours. This was strongly refuted by the learned counsel for the writ petitioner (appellant herein),
Sri Nooty Rama Mohan Rao. Thereupon, the learned Assistant Government Pleader made a request for time to get instructions and produce the records. Thereafter, the official respondents appear to have produced the relevant records before the Court. On
15-11-2005, the learned Single Judge passed the following order:

> "There is a serious allegation that the record was concocted and manipulated to favour the fifth respondent. Record is produced before this Court. The learned Assistant Government Pleader requests the record for preparation of the counter

> affidavit. Therefore, the Registry is directed to take out a xerox copy of the entire file and handover the xerox copy of the file to the learned Assistant Government Pleader. The original record shall be kept in a sealed cover with the Registrar Judicial, today itself.
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> Post on 18-11-2005."

On 22-11-2005, the learned Single Judge admitted the writ petition filed by the appellant and directed that the case be listed before appropriate Bench after obtaining orders from the Chief Justice. Simultaneously, the Registry was directed to return the record to the learned Government Pleader so as to enable the official respondents to encash the demand drafts given by respondent No.5. Thereafter, the case was listed before the Division Bench. On December 30, 2005, learned counsel for the writ petitioner (appellant herein) made a request that his client maybe permitted to withdraw the amount. His request was accepted by the Court. On 06-04-2006, the matter was released by the II Division Bench. Thereafter, the writ petition of the appellant was placed before this Bench.

When Writ Petition No. 24165 of 2005 filed by respondent No.1 was taken up for hearing, attention of the learned Single Judge does not appear to have been drawn to the proceedings of Writ Petition No. 23782 of 2005 in which the record of the auction had been summoned and kept in a sealed cover. Therefore, without having knowledge of the developments which had taken place in the writ filed by the appellant, the learned Single Judge disposed of the writ petition with the direction that the bid of the writ petitioner (respondent No.1) may be confirmed. The order passed by the learned Single Judge makes a reference to another Writ Petition No. 21535 of 2005 filed for questioning the auction held for another package comprising of Vemagiri, Gopalapuram, Atreyapuram and Ankampalem reaches. In the context of the stay order passed in Writ Petition No. 21535 of 2005, the learned Single Judge observed that the same does not have any effect on the right of the writ petitioner to seek confirmation of the bid.

We have heard learned counsel for the parties. In our opinion, the order under challenge is liable to be set aside with a direction that Writ Petition No. 24165 of 2005 be heard along with Writ Petition No. 23782 of 2005. Undisputedly, the subject matter of both the petitions was package No.3 and the issues raised therein are

directly inter-related. Therefore, it was the bounden duty of the Registry of the Court and also of the Government Pleader to have apprised the learned Single Judge of the fact that the highest bid given by the writ petitioner of Writ Petition No. 24165 of 2005 was subject matter of challenge in Writ Petition No. 23782 of 2005. We are sure that if the learned Single Judge had been apprised of the fact that in pursuance of the direction given by him on 08-11-2005, the record of the auction held in relation to the disputed package had been sealed, his Lordships would have certainly directed listing of both the petitions together and decided the same by taking a comprehensive view of the averments contained in the pleadings of both the cases. However, the fact of the matter is that the learned Single Judge did not get the opportunity to hear both the petitions simultaneously and, on that account, failure of justice has occasioned and contradictory orders being passed by a coordinate Bench became a distinct reality.

For the reasons mentioned above, the appeal is allowed. Order dated 11-11-2005 passed by the learned Single Judge is set aside and the case is remitted for fresh adjudication of the claim made by respondent No.1. Writ Petition No.24165 of 2005 shall now be listed before an appropriate Bench along with Writ Petition No. 23782 of 2005.

Since the issue raised in the writ petitions deserves an early adjudication, we direct that both the petitions be laid before the appropriate Bench on 06-06-2006.

While disposing of the appeal in the manner indicated above, we make it clear that it will be open to respondent No.1 herein to contend that the appellant does not have the locus standi to question his bid because he has already withdrawn the bid amount by seeking leave of the Court.

G.S.SINGHVI, CJ

G.BHAVANI PRASAD, J

24-04-2006

ks/GRR / svs